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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:  
  
ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF ALEXANDER H.  
SOUTHWELL IN SUPPORT OF  
FACEBOOK'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL**

1 I, Alexander H. Southwell, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of New York. I am a partner  
3 with the law firm of Gibson, Dunn & Crutcher LLP. I submit this declaration in support of Face-  
4 book's Administrative Motion to File Under Seal. I make this declaration on my own  
5 knowledge, and I would testify to the matters stated herein under oath if called upon to do so.

6 2. Facebook initiated the Application Developer Investigation ("ADI" or the  
7 "Investigation") because, in the wake of the reporting of data misuse by Cambridge Analytica in  
8 March 2018, Facebook anticipated that it would have to respond to known and expected legal  
9 challenges in connection with applications and developers that may have had access to large amounts  
10 of user data because they were active before Facebook placed additional, significant limitations on  
11 the amount and type of data developers could request from users through the Facebook Platform  
12 in 2014.

13 3. To this end, Facebook retained outside counsel (Gibson, Dunn & Crutcher LLP)  
14 experienced with cybersecurity and data privacy internal investigations to design and direct a new  
15 investigation (ADI) that could, among other things, gather the facts necessary for providing legal  
16 advice to Facebook about litigation, compliance, regulatory inquiries, and other legal risks facing the  
17 company resulting from potential data misuse and activities by third-party app developers operating  
18 on the prior version of Facebook's platform.

19 4. I led the Gibson Dunn team engaged to develop and conduct the Investigation.

20 5. The Investigation was highly complex and addressed millions of applications  
21 operating before changes were made to Facebook's platform. There was no industry standard for  
22 how to conduct such an investigation. Rather, under Gibson Dunn's and in-house counsel's  
23 leadership, the ADI investigative team devised and tailored the ADI's methods, protocols, and  
24 strategies to address the specific risks posed by these legal challenges. These proprietary methods  
25 and techniques are valuable to Facebook.

26 6. The methods, techniques, and strategies employed during the Investigation are not  
27 only privileged but also highly confidential. Indeed, Facebook has taken numerous substantial steps  
28 to maintain the confidentiality of details regarding the Investigation. For example, details about the

Investigation are disclosed to Facebook employees only on a need-to-know basis. As a result, a limited number of Facebook employees, counsel, and third-party experts have accessed this highly sensitive information.

7. On May 5, 2021, as part of mediation discussions aimed toward resolving the parties' dispute regarding Facebook's production of documents related to its Investigation, Facebook agreed to create for Plaintiffs a document containing confidential conclusions of the Investigation with respect to certain apps to allow Plaintiffs to make a tailored request for the underlying facts they indicated would resolve the dispute. Facebook provided this information to Plaintiffs in an effort to resolve the parties' ADI dispute, as part of a mediated process to resolve the dispute, and on the express condition that Facebook was providing the document subject to mediation confidentiality. The document Facebook provided Plaintiffs states on every page: "CONFIDENTIAL MEDIATION MATERIAL—PRODUCED SUBJECT TO MEDIATION CONFIDENTIALITY."

8. Facebook subsequently provided Plaintiffs a protocol to fully resolve their ADI dispute that references the confidential information Facebook provided on May 5, 2021. *See* Dkt. 699-1, FB Ex. A. Plaintiffs responded with a revised version of the protocol that contains the same confidential information. *See* Dkt. 699-1, FB Ex. B.

9. On July 2, 2021, the parties filed a joint letter brief regarding their dispute about materials Plaintiffs seek relating to ADI. Dkt. 699. Facebook attached to that submission the protocol it had provided Plaintiffs to resolve the dispute and Plaintiffs' revisions to that protocol, which reference the confidential information Facebook provided on May 5, 2021. Dkt. 699-1, 699-2. Facebook seeks to redact portions of three lines from each document in order to maintain the confidentiality of the investigatory information Facebook provided subject to mediation confidentiality. Dkt. 699 Ex. A, Ex. B.; *see also* Facebook's Administrative Motion to Seal, Dkt. 698; Kutscher Decl., Dkt. 698-1, Exs. 1 and 3.

10. Facebook seeks to redact only portions of three lines from each exhibit. Two of the lines Facebook asks the Court to redact reveal directly information contained in the confidential document Facebook provided Plaintiffs on May 5, 2021 subject to mediation confidentiality. The third line Facebook seeks to redact contains information that, combined with public information from

1 the parties' joint letter brief, reveals the confidential information Facebook provided Plaintiffs subject  
2 to mediation privilege.

3 11. The information Facebook seeks to redact is separately and independently confidential  
4 because it reveals confidential aspects of the Investigation, including confidential investigatory  
5 results. In the context of the Exhibits Facebook seeks to redact, these results appear out of context  
6 and without critical confidential and privileged information that is needed to understand and interpret  
7 them. Public access to these conclusions without appropriate context may lead to confusion about the  
8 Investigation's results and reputational harm, which Facebook could remedy only by revealing  
9 additional confidential and privileged information about its Investigation.

10 \* \* \*

11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct. Executed on July 9, 2021 in New York, New York.

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Alexander H. Southwell